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Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
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E-Mailed as PDF
to Mr. Fulton 6/29/07 pm.

June 27, 2007

James Fulton, Chief
Denver Field Division
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-5733

Re: Informal Program Amendment Pertaining to the Utah Coal Rules, R645-303-222,
and Utah Code Annotated §40-10-12

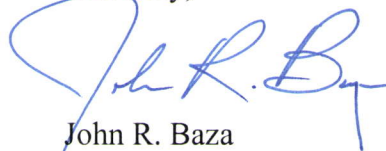
Dear Mr. Fulton:

The Division of Oil, Gas & Mining hereby submits an informal program amendment to the Office of Surface Mining in conjunction with modifications made to the state statute and rules for Utah's Coal Regulatory Program. These modifications pertain to extensions to a permit area and enable their processing as a significant permit revision.

As noted in the Federal Register of June 8, 2006, this proposed rule change was originally submitted along with other rule changes in our letter dated November 28, 2005. During the review of these rule amendments, your office identified a concern with Utah Admin. Rule R645-303-222 not being consistent with the plain wording of U.C.A. §40-10-12(1)(c). Our division responded in a letter dated February 16, 2006 by withdrawing the change to R645-303-222 from the formal program amendment. During Utah's 2007 legislative session, S.B. 48 was passed and signed by the Governor with language that clarified the statutory authority for the rule.

Enclosed are a side-by-side analysis of the changes to the statute and the rules as compared to the federal citation, the full text of the rule amendment, and the full text of S.B. 48. Please provide comments or questions to Steve Schneider at 801-538-5328 or steveschneider@utah.gov in order to enable our division to promptly proceed with the filing of a formal program amendment on this matter.

Sincerely,



John R. Baza
Director

Enclosures
SLS:jc



Utah Statute

§40-10-12(1)

~~[(e)]~~ (e) Any extensions to the area covered by the permit, except incidental boundary revisions, must be made by: (i) an application for a significant revision of the permit; or (ii) an application for another permit.

Comments: Amendment to the statute via S.B. 48 is to provide more clear authority for the Utah rule. Other amendments to the statute reflected in S.B. 48 were non-substantive.

Utah Rule

R645-303-222. The operator will obtain approval of a permit change by making application in accordance with R645-303-220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the approved permit; provided, however, that any extensions to the approved permit area, except for Incidental Boundary Changes, must be processed and approved using the procedural requirements of R645-303-226 ~~[through application for a new permit and may not be approved under R645-303-221 through R645-303-228].~~

Comments: Extensions to the permit area, except for IBC's, are processed and approved with rule reference to the "significant permit revisions" section (R645-303-226).

Federal Citation

30CFR Sec.774.13 Permit revisions.
(d) Request to change permit boundary. Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

Comments: Significant permit revisions and new permits require the same information and public notice, thus OSM has found that other states who have previously made this amendment to the state program are still as effective as the federal program.

R645. Natural Resources; Oil, Gas & Mining; Coal.

R645-303-200. Permit Review, Change and Renewal.

210. Division Review of Permits.

211. The Division will review each permit issued and outstanding under the State Program during the term of the permit. This review will occur not later than the middle of each permit term and as follows:

211.100. Permits with a term longer than five years will be reviewed no less frequently than the permit midterm or every five years, whichever is more frequent;

211.200. Permits with variances granted in accordance with R645-302-220 and R645-302-280 will be reviewed no later than three years from the date of issuance of the permit unless, for variances issued in accordance with R645-302-220, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit; and

211.300. Permits containing experimental practices issued in accordance with R645-302-210 and permits with a variance from approximate original contour requirements in accordance with R645-302-270 will be reviewed as set forth in the permit or at least every two and one-half years from the date of issuance as required by the Division in accordance with R645-302-217 and R645-302-273, respectively.

212. After the review required by R645-303-211, or at any time, the Division may, by order, require reasonable permit change in accordance with R645-303-220 to ensure compliance with the State Program.

213. Any order of the Division requiring permit change will be based upon written findings and will be subject to the provisions for administrative and judicial review under R645-300-200. Copies of the order will be sent to the permittee.

214. Permits may be suspended or revoked in accordance with R645-400.

220. Permit Changes.

221. At any time during the term of a permit, the permittee may submit to the Division, pursuant to R645-303-220, an Application for Permit Change. The Division will review and respond to an initial Application for a Permit Change within 15 days of receipt of the application.

222. The operator will obtain approval of a permit change by making application in accordance with R645-303-220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the approved permit; provided, however, that any extensions to the approved permit area, except for Incidental Boundary Changes, must be processed and approved using the procedural requirements of R645-303-226 ~~[through application for a new permit and may not be approved under R645-303-221 through R645-303-228]~~.

223. The Application for Permit Change will identify the proposed change, or changes, and include the information required under, R645-301, and R645-302 to the extent applicable to the proposed change or changes. The Application for Permit Change will be categorized as a Significant Permit Revision if it involves any of the changes or circumstances set forth in R645-303-224. All other Applications for Permit Change, including Incidental Boundary Changes, will be categorized as Permit Amendments.

224. An Application for Permit Change must be categorized and processed as a Significant Permit Revision for any of the following changes or circumstances:

224.100. An increase in the size of the surface or subsurface disturbed area in an amount of 15 percent, or greater, than the disturbed area under the approved permit;

224.200. Engaging in operations outside of the cumulative impact area as defined in the Cumulative Hydrologic Impact Assessment (CHIA);

224.300. Engaging in operations in hydrologic basins other than those authorized in the approved permit;

224.400. In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued; or

224.500. As otherwise required under applicable law or regulation.

225. Applications for Significant Permit revisions and Permit Amendments will be submitted to the Division at least 120 days and 60 days, respectively, before the change in operations is expected to be implemented.

226. Significant Permit Revisions as provided in R645-303-224 will be reviewed and processed by the Division in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, including requirements for notice, public participation, and notice of decision.

227. Permit Amendments will be processed in accordance with the requirements of R645-300-100 and R645-300-200, and the information requirements of R645-301 and R645-302, except that permit amendments will not be subject to requirements for notice, public participation, or notice of decision of R645-300-100.

228. The Division will approve or disapprove the Application for Significant Permit Revisions and Permit Amendments, within 120 days and 60 days, respectively, of receipt by the Division of the Administratively Complete Application for Permit Change. The Director may extend the designated time period if it is determined that due to weather conditions, or other considerations, it is physically impossible to perform the review of the Application for Permit Change within that time period.

230. Permit Renewals.

231. General. A valid permit, issued pursuant to the State Program, will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

232. Application Requirements and Procedures.

232.100. An application for renewal of a permit will be filed with the Division at least 120 days before expiration of the existing permit term.

232.200. An application for renewal of a permit will be in the form required by the Division and will include at a minimum:

232.220. Evidence that a liability insurance policy or adequate self-insurance under R645-301-800 will be provided by the applicant for the proposed period of renewal;

232.230. Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the Division pursuant to R645-301-800;

232.240. A copy of the proposed newspaper notice and proof of publication of same, as required by R645-300-121.100; and

232.250. Additional, revised, or updated information required by the Division.

232.300. Applications for renewal will be subject to the requirements of public notification and public participation contained in R645-300-120 and R645-300-152.

232.400. If an application for renewal includes any proposed revisions to the permit, such revisions will be identified and subject to the requirements of R645-303-220.

232.500. Irrespective of any other R645 rule requirements for permitting coal mining and reclamation operations, a permittee may renew a permit for the purpose of reclamation only if solely reclamation activities remain to be done and no coal will be extracted, processed, or handled. Obligations established under a permit will continue regardless of whether the authorization to extract, process, or handle coal has expired or has been terminated, revoked, or suspended.

233. Approval Process.

233.100. Criteria for approval. The Division will approve a complete and accurate application for permit renewal, unless it finds, in writing that:

233.110. The terms and conditions of the existing permit are not being satisfactorily met;

233.120. The present coal mining and reclamation operations are not in compliance with the environmental protection standards of the State Program;

233.130. The requested renewal substantially jeopardizes the operator's continuing ability to comply with the State Program on existing permit areas;

233.140. The operator has not provided evidence of having liability insurance or self-insurance as required in R645-301-890;

233.150. The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Division might require pursuant to R645-301-800; or

233.160. Additional, revised, or updated information required by the Division under R645-303-232.250 has not been provided by the applicant.

233.200. Burden of Proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof will be on the opponents of renewal.

233.300. Alluvial Valley Floor Variance. If the coal mining and reclamation operation authorized by the original permit was not subject to the standards contained in sections 40-10-11(2)(e)(i) and (ii) of the Act and R645-302-320, because the permittee complied with the exceptions in the proviso to section 40-10-11(2)(e)(ii) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit will not be subject to the standards contained in sections 40-10-11(2)(e)(i) and (ii) of the Act and R645-302-320.

234. Renewal Term. Any permit renewal will be for a term not to exceed the period of the original permit established under R645-300-150.

235. Notice of Decision. The Division will send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to the Office.

236. Administrative and Judicial Review. Any person having an interest which is or may be adversely affected by the decision of the Division will have the right to administrative and judicial review set forth in R645-300-200.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: February 6, 2004

Notice of Continuation: March 7, 2007

**AMENDMENTS TO COAL MINING AND
RECLAMATION**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: Brad King

LONG TITLE

General Description:

This bill amends a coal mining and reclamation requirement.

Highlighted Provisions:

This bill:

- ▶ authorizes a person proposing to extend the area of a coal mining permit to file an application for a significant revision of the permit; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-10-12, as last amended by Chapter 219, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **40-10-12** is amended to read:

40-10-12. Revised permit and reclamation plan -- Application -- Transfer, assignment, or sale of rights -- Revision or modification of permit provisions.

(1) (a) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the division.

(b) An application for a revision of a permit shall not be approved unless the division finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

(c) The revision shall be approved or disapproved within a period of time established by the division.

(d) (i) The division shall establish guidelines ~~[for a determination of]~~ determining the scale or extent of a revision request for which all permit application information, requirements, and procedures, including notice and hearings, shall apply ~~[; but any]~~.

(ii) Any revisions ~~[which]~~ that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

~~(c)~~ (e) Any extensions to the area covered by the permit, except incidental boundary revisions, must be made by:

(i) an application for a significant revision of the permit; or

(ii) an application for another permit.

(2) No transfer, assignment, or sale of the rights granted under any permit issued ~~[pursuant]~~ according to this chapter shall be made without the written approval of the division.

(3) (a) The division shall, within a time limit prescribed in rules ~~[promulgated]~~ adopted by the board, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of the permit ~~[; but the]~~.

(b) The revision or modification shall be:

(i) based upon a written finding; and

(ii) subject to notice and hearing requirements established by this chapter.